

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
SUNOCO, INC. (R&M)**DEFENDANTS**
KIMBERLY-CLARK PENNSYLVANIA LLC
KIMBERLY-CLARK CORPORATION(b) County of Residence of First Listed Plaintiff **PHILADELPHIA COUNTY**
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Thomas J. McCarrigle & Nipun J. Patel
Reed Smith, LLP, 2500 One Liberty Place, 1650 Market Street
Philadelphia, PA 19103 (215) 8518100Attorneys (If Known)
See Attached List**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332 (Diversity Jurisdiction)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
04/04/2013

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

BAKER BOTTS L.L.P.

Michael J. Barta

pro hac vici application forthcoming

Mark R. Robeck

pro hac vici application forthcoming

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUNOCO, INC (R&M)
1818 Market Street, Suite 1500
Philadelphia, PA 19103

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC
Front Street & Avenue of the States
Chester, PA 19103

and

KIMBERLY-CLARK CORPORATION
351 Phelps Drive
Irving, TX 75038

Defendants

CIVIL ACTION NO.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 and in accordance with 28 USC § 1446, Defendants Kimberly-Clark Pennsylvania, LLC (“K-C Penn”) and Kimberly-Clark Corporation (“K-CC”) (together, “Defendants”) file this Notice of Removal to the United States District Court for the Eastern District of Pennsylvania.

I. Compliance with 28 U.S.C. § 1446

1. Defendant K-CC was served by mail with Plaintiff's Complaint on March 7, 2013. Since this Notice of Removal is being filed within 30 days of service, it is therefore timely filed in accordance with 28 U.S.C. §1446(b).

2. Defendants will give written notice of the filing of this Notice of Removal to Plaintiff and will file a copy of such notice with the Clerk of Court of the Court of Common Pleas for Philadelphia County, to effect this removal in accordance with 28 U.S.C. § 1446(d).

II. Basis for Removal

3. Plaintiff Sunoco, Inc. (R&M) ("Sunoco") is a Pennsylvania corporation, with its principal place of business in Philadelphia, Pennsylvania.

4. Defendant K-CC is a Delaware corporation, with a principal place of business in Irving, Texas.

5. Defendant K-C Penn is a Delaware limited liability company, with its principal place of business in Chester, Pennsylvania. K-CC is the only member of K-C Penn. *See* Exhibit A, Affidavit of Steve Milton.

6. For diversity jurisdiction purposes, "the citizenship of an LLC is determined by the citizenship of each of its members." *Zambelli Fireworks Manufacturing Co., Inc. v. Wood*, 592 F.3d 412, 418 (3d Cir. 2010). K-C Penn's citizenship is therefore determined by the citizenship of its only member, K-CC. K-C Penn is, therefore, a citizen of the states of Delaware and Texas.

7. Thus, in accordance with 28 U.S.C. § 1332(a)(2), there is complete diversity of citizenship among the parties.

8. As demonstrated by the Complaint, the amount in controversy exceeds \$75,000 exclusive of interest and cost. Plaintiff is seeking in excess of \$15,000,000.

III. Reservation of Rights

9. By filing the instant Notice, Defendants do not waive, and fully reserve all rights and defenses.

IV. Defendants Have Satisfied The Procedural Requirement for Removal

10. The United States District Court for the Eastern District of Pennsylvania embraces the county in which the state court action is now pending. Therefore, under 28 U.S.C. §§ 124(a)(1) and 1441(a), the Court is a proper venue for this action.

11. Defendants have attached as Exhibit B to this Notice of Removal a copy of all process, pleadings, and orders served in this case.

V. Conclusion

12. Defendants respectfully remove this action, presently pending in the Court of Common Pleas for Philadelphia County, to the United States District Court for the Eastern District of Pennsylvania. If any question arises as to the propriety of removal to this Court, Defendants request the opportunity to present a brief and oral argument supporting removal.

Respectfully submitted,

/S/

BAKER BOTTS L.L.P.

Michael J. Barta

pro hac vici application forthcoming

Mark R. Robeck

pro hac vici application forthcoming

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Attorneys for Defendants

Dated: April 4, 2013

EXHIBIT A

EXHIBIT A

THE STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

AFFIDAVIT OF STEVE MILTON

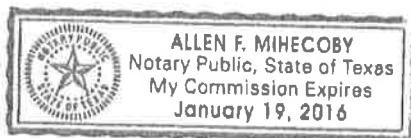
My name is Steven W. Milton. I am over the age of eighteen (18) years and am competent to make this declaration. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is within my personal knowledge and true and correct:


1. I have been employed by Kimberly-Clark Corporation since 2007 in its Legal Department. My current title is Assistant General Counsel and Assistant Secretary.
2. During the course of acting as Assistant General Counsel and Assistant Secretary for Kimberly-Clark, I have gained personal knowledge of the corporate structure of Kimberly-Clark Corporation and its subsidiaries.
3. Kimberly-Clark Pennsylvania, LLC is a limited liability company organized under the laws of the State of Delaware and Kimberly-Clark Corporation is the only member of Kimberly-Clark Pennsylvania, LLC.

FURTHER AFFIANT SAYETH NOT.


Steven W. Milton

SWORN AND TO AND SUBSCRIBED before me on this 4th day of April,
2013.




Notary Public, State of Texas

My Commission Expires: January 19, 2016

EXHIBIT B

EXHIBIT B

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

		For Prothonotary Use Only (Docket Number)	
PLAINTIFF'S NAME SUNOCO, INC. (R&M)		MARCH 2013 E-Filing Number: 1303008755 000637	
PLAINTIFF'S ADDRESS 1818 MARKET STREET PHILADELPHIA PA 19103		DEFENDANT'S NAME KIMBERLY-CLARK PENNSYLVANIA, LLC	
PLAINTIFF'S NAME		DEFENDANT'S ADDRESS FRONT ST. & AVE. OF THE STATES CHESTER PA 19013	
PLAINTIFF'S ADDRESS		DEFENDANT'S NAME KIMBERLY-CLARK CORPORATION	
PLAINTIFF'S NAME		DEFENDANT'S ADDRESS 351 PHELPS DRIVE IRVING TX 75038	
PLAINTIFF'S ADDRESS		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 2	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 3T - TORTS TO LAND			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		FILED PROTHONOTARY MAR 06 2013	
		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>SUNOCO, INC. (R&M)</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY THOMAS J. MCGARRIGLE		ADDRESS 2500 LIBERTY PLACE 1650 MARKET STREET PHILADELPHIA PA 19103	
PHONE NUMBER (215) 851-8220	FAX NUMBER none entered		
SUPREME COURT IDENTIFICATION NO. 27868		E-MAIL ADDRESS tmcgarrigle@reedsmith.com	
SIGNATURE OF FILING ATTORNEY OR PARTY THOMAS MCGARRIGLE		DATE SUBMITTED Wednesday, March 06, 2013, 01:59 pm	

SUNOCO, INC. (R&M)
1818 Market Street, Suite 1500
Philadelphia, PA 19103,

Plaintiff,

v.

KIMBERLY-CLARK PENNSYLVANIA,
LLC
Front Street & Avenue of the States
Chester, PA 19013,

and

KIMBERLY-CLARK CORPORATION
351 Phelps Drive
Irving, TX 75038,

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CASE NO. _____



NOTICE TO DEFEND

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Amended Complaint or for any other money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea a visado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio, vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

Asociacion De Licenciados De Filadelfia
Servicio De Referencia E Informacion Legal
One Reading Center
Filadelfia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

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(215) 851-1420 Fax

Attorneys for Plaintiff
Sunoco, Inc. (R&M)

SUNOCO, INC. (R&M)
1818 Market Street, Suite 1500
Philadelphia, PA 19103,

Plaintiff,

v.

KIMBERLY-CLARK PENNSYLVANIA,
LLC
Front Street & Avenue of the States
Chester, PA 19013

and

KIMBERLY-CLARK CORPORATION
351 Phelps Drive
Irving, TX 75038

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CASE NO. _____

COMPLAINT

Plaintiff Sunoco, Inc. (R&M) ("Sunoco"), by and through its undersigned counsel, Reed Smith LLP, brings the within Complaint against Defendants Kimberly-Clark Pennsylvania, LLC, and Kimberly-Clark Corporation (collectively, "Kimberly-Clark" or "Defendants") and in support thereof avers as follows:

INTRODUCTION

1. This action arises out of a power disruption at Sunoco's refinery and plant located in Marcus Hook, Pennsylvania (the "Marcus Hook Refinery") which resulted in millions of

dollars of damages to Sunoco's property, equipment, and operations. The power disruption was an immediate, direct, and proximate result of the negligence of Defendants in failing to properly conduct a planned power outage at Kimberly-Clark's neighboring mill and plant located in Chester, Pennsylvania. Defendants received instructions in early 2011 on the procedures for safely effectuating the planned power outage, but nevertheless negligently and carelessly failed to follow those procedures.

PARTIES

2. Plaintiff Sunoco, Inc. (R&M) is a Pennsylvania corporation maintaining its principal place of business at 1818 Market Street, Suite 1500, Philadelphia, Pennsylvania 19103.

3. At all relevant times hereto, Sunoco owned and operated the Marcus Hook Refinery, which is located at 100 Green Street, Marcus Hook, Pennsylvania 19061.

4. Sunoco owned the real property, improvements thereto, and all equipment, furnishings, contents and other business and personal property which makes up the Marcus Hook Refinery.

5. Defendant Kimberly-Clark Pennsylvania, LLC is a Delaware limited liability company maintaining its principal place of business at Front St. & Avenue of the States, Chester, Pennsylvania 19013.

6. Defendant Kimberly-Clark Corporation is incorporated in Delaware and maintains its principal place of business at 351 Phelps Drive, Irving, Texas 75038.

7. Kimberly-Clark Corporation is the sole member of Kimberly-Clark Pennsylvania, LLC.

8. On information and belief, Kimberly-Clark Corporation controls and/or actively participates in Kimberly-Clark Pennsylvania, LLC's daily operations.

9. At all relevant times hereto, Kimberly-Clark owned and operated a mill and plant at its Chester location which focuses on the production of towels and tissues marketed under the “Scott” brand name.

10. The Marcus Hook Refinery and Kimberly-Clark’s Chester mill and plant are located in an industrialized section of Chester County, Pennsylvania, and have been so located for numerous years.

11. Kimberly-Clark’s Chester mill and plant is geographically located only a few miles from the Marcus Hook Refinery.

12. Kimberly-Clark knew, or should have known, of Sunoco’s operations at the Marcus Hook Refinery.

13. At all relevant times hereto, Kimberly-Clark acted by and through its duly authorized agents, servants, employees, and contractors, all of whom were acting within their full scope and authority and in furtherance of Kimberly-Clark’s business and interests.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court because, at all relevant times hereto, Sunoco and Kimberly-Clark regularly conducted business in the Commonwealth of Pennsylvania, and because all or a substantial portion of the facts and occurrences which are the subject of this Complaint took place in the Commonwealth of Pennsylvania.

15. Venue is proper in Philadelphia County because Sunoco is located in Philadelphia County, and Kimberly-Clark regularly conducts business in Philadelphia County.

FACTUAL BACKGROUND

16. In early 2011, Kimberly-Clark planned to perform maintenance and/or a replacement of its transmission system at its Chester mill and plant.

17. To perform the maintenance and/or repair required Kimberly-Clark to de-energize the electrical service to its system, perform the maintenance and/or replacement and then reconnect the electrical service to its system.

18. Both Kimberly-Clark and Sunoco obtain their electricity from PECO.

19. Kimberly-Clark notified PECO of its planned power outage to perform its maintenance.

20. PECO visited Kimberly-Clark's site to verify Kimberly-Clark's switch designation and PECO's single line drawing.

21. Kimberly-Clark received instructions from PECO including instructions regarding the sequence of electrical switches necessary to safely perform the outage to avoid a fault and resultant damage to other customers.

22. Kimberly-Clark failed to follow the PECO instructions.

23. On March 28, 2011, Kimberly-Clark performed its own switching in preparation of its planned outage.

24. At approximately 4:19 p.m. Kimberly-Clark closed its 3-phase ground switch out of sequence onto a 69 KV bus that was still energized.

25. Kimberly-Clark's action caused a large amount of fault current to flow and depressed the voltage in PECO's Chester substation to near zero.

26. Kimberly-Clark's incoming circuit breaker should have operated timely to remove the fault that Kimberly-Clark created, but the circuit breaker failed to open.

27. As a result of the failure of Kimberly-Clark's circuit breaker to timely open, the fault lasted 18.5 cycles.

28. The circuit breakers did not timely open as a result of Kimberly-Clark's failure to properly inspect, repair, service, test, and/or maintain them.

29. As a direct result of Kimberly-Clark's action the voltage at PECO's substation dropped from 69KV to 18KV.

30. As a direct result of Kimberly-Clark's acts, the PECO substation which feeds Sunoco's Marcus Hook Refinery had its 13KV bus voltage decreased to 5.2 KV.

31. As a direct result of Kimberly-Clark's actions, the electrical load at Sunoco's Marcus Hook Refinery dropped from approximately 48 MW to only 16 MW.

32. The severity of the fault and its extended duration created by Kimberly-Clark surpassed the threshold that Sunoco's equipment could handle in order to continue normal operations.

33. As a direct and proximate result of the electrical fault caused by Kimberly-Clark, there was an immediate 18.5 cycles disruption in the Marcus Hook Refinery's electrical power feed.

34. The power disruption caused an immediate shut down of nearly all equipment and machinery located at the Marcus Hook Refinery.

35. Among other things, the power disruption caused by Kimberly-Clark resulted in severe physical damage to the Marcus Hook Refinery, including:

- a. a complete shut down of several boilers which power the refinery's essential refining equipment and machinery;
- b. clogging of the refinery's fluid catalytic converter unit – the core piece of equipment used to refine petroleum, causing it to be inoperable;
- c. a loss of the refinery's air compressors;
- d. the tripping off line of the electrical equipment at the refinery that is not supplied by uninterrupted power supplies.

e. heavy black smoke emanating from stacks located on the refinery.

36. As a result of the foregoing extensive physical damage to the Marcus Hook Refinery's equipment and machinery, Sunoco was unable to operate its refining activities at the refinery for approximately ten (10) days.

37. As a result of the ten (10) day refinery shut down, Sunoco lost millions of dollars in sales revenue.

38. Sunoco personnel and outside contractors were also required to work around the clock during the ten (10) day shutdown to perform repairs and testing of damaged equipment to ensure a safe re-start of operations.

39. Sunoco also accrued millions of dollars in demurrage charges for petroleum that could not be delivered, refined or otherwise used during the power disruption.

40. At all times prior to and after the ten (10) day shutdown, the Marcus Hook Refinery was operating at full capacity.

COUNT I
(NEGLIGENCE)

41. Sunoco incorporates by reference the averments of the preceding paragraphs as if fully set forth herein.

42. Defendants owed a duty to use reasonable care in their activities so as to avoid damage or injury to Sunoco.

43. Defendants knew or should have known that their aforementioned negligence and carelessness could, and would, result in a power disruption and concomitant damage to businesses located near Kimberly-Clark's Chester mill and plant such as Sunoco's Marcus Hook Refinery.

44. Kimberly-Clark also had a duty to use and maintain its Chester plant and the equipment located thereon in a safe and reasonable manner which would not injure nearby landowners such as Sunoco.

45. Defendants negligently breached the foregoing duties by:

- a. failing to follow PECO's instructions regarding the procedures for safely effectuating a planned power outage;
- b. failing to use reasonable care in performing electrical switching operations;
- c. failing to properly inspect, repair, service, test, and/or maintain circuit breakers which caused the electrical fault to last for a time period sufficient to trip the electrical equipment at the plant – had the circuit breaker operated as designed, the electrical fault would have cleared within 8 cycles and allowed the electrical equipment at the refinery to ride through the fault; and
- d. failing to adequately train and supervise their employees, agents, contractors and sub-contractors in the performance of electrical switching and testing.

46. As a direct and proximate result of Defendants' aforementioned negligence and carelessness, Sunoco suffered millions of dollars of damages to its property, equipment, and operations at the Marcus Hook Refinery.

WHEREFORE, Sunoco respectfully requests that the Court enter judgment in its favor and against Defendants in an amount in excess of \$15,000,000, and grant Sunoco such further and additional relief as the Court deems just and proper.

COUNT II
(PRIVATE NUISANCE)

47. Sunoco incorporates by reference the averments of the preceding paragraphs as if fully set forth herein.

48. The aforementioned negligence and carelessness of Defendants resulted in a substantial and direct invasion of Sunoco's right to use and enjoy its property and land located at the Marcus Hook Refinery.

49. Sunoco suffered significant harm to its property, equipment, and operations as a direct and proximate result of the nuisance that was created by Defendants.

WHEREFORE, Sunoco respectfully requests that the Court enter judgment in its favor and against Defendants in an amount in excess of \$15,000,000, and grant Sunoco such further and additional relief as the Court deems just and proper.

JURY DEMAND

50. Sunoco demands a jury trial on all issues so triable.

By: s/Thomas J. McGarrigle
REED SMITH LLP
Thomas J. McGarrigle, Esquire
Pa. Id. No. 27868
Nipun J. Patel, Esquire
Pa. Id. No. 208130
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7301
(215) 851-8100
(215) 851-1420 (facsimile)
tmcgarrigle@reedsmith.com
npatel@reedsmith.com

Attorneys for Plaintiff
Sunoco, Inc. (R&M)

Dated: March 6, 2013

VERIFICATION

I, Jonathan A. Hunt, Operations Manager for Sunoco, Inc. (R&M) ("Sunoco"), hereby state that I am authorized to make this Verification on Sunoco's behalf. I hereby verify subject to the penalties for falsification provided for under 18 Pa. C. S. § 4904 that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge information and belief.



Jonathan A. Hunt

Dated: March 5, 2013

REED SMITH LLP
Thomas J. McGarrigle
Identification No. 27868
Nipun J. Patel
Identification No. 208130
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(215) 851-8100
(215) 851-1420 Fax

Attorneys for Plaintiff
Sunoco, Inc. (R&M)



SUNOCO, INC. (R&M)
1818 Market Street, Suite 1500
Philadelphia, PA 19103,

Plaintiff,

v.

KIMBERLY-CLARK PENNSYLVANIA,
LLC,
Front Street & Avenue of the States
Chester, PA 19013

and

KIMBERLY-CLARK CORPORATION,
351 Phelps Drive
Irving, TX 75038

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CASE NO. 130300637

AFFIDAVIT OF SERVICE OF THE COMPLAINT

I, Nipun J. Patel, counsel for plaintiff Sunoco, Inc. (R&M), being duly sworn according to the law, deposes and says that service of a true and correct copy of the Complaint was made upon Defendant Kimberly-Clark Corporation, 351 Phelps Drive, Irving, TX 75038, as evidenced by the Delivery Notification attached hereto as Exhibit A.

By:



Mipun J. Patel

REED SMITH LLP

Attorney for Plaintiff Sunoco, Inc. (R&M)

March 13, 2013

SWORN TO and SUBSCRIBED
before me this 13th day of March 2013



Notary Public

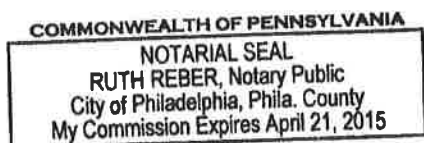


EXHIBIT A



Case ID: 130300637
https://www.campusship.ups.com/campus_track/processPOD?lineData=DALLAS%5EBK... 3/13/2013

REED SMITH LLP
Thomas J. McGarrigle
Identification No. 27868
Nipun J. Patel
Identification No. 208130
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(215) 851-8100
(215) 851-1420 Fax

Attorneys for Plaintiff
Sunoco, Inc. (R&M)



SUNOCO, INC. (R&M)
1818 Market Street, Suite 1500
Philadelphia, PA 19103,

Plaintiff,

v.

KIMBERLY-CLARK PENNSYLVANIA,
LLC,
Front Street & Avenue of the States
Chester, PA 19013

and

KIMBERLY-CLARK CORPORATION,
351 Phelps Drive
Irving, TX 75038

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CASE NO. 130300637

AFFIDAVIT OF SERVICE OF THE COMPLAINT

I, Nipun J. Patel, counsel for plaintiff Sunoco, Inc. (R&M), being duly sworn according to the law, deposes and says that service of a true and correct copy of the Complaint was made by the Delaware County Sheriff's Office upon Defendant Kimberly-Clark Pennsylvania, LLC, Front Street & Avenue of the States, Chester, PA 19013, as evidenced by the Return of Service form attached hereto as Exhibit A.

March 26, 2013

By:


Nipun J. Patel
REED SMITH LLP
Attorney for Plaintiff Sunoco, Inc. (R&M)

SWORN TO and SUBSCRIBED
before me this 26th day of March 2013


Notary Public

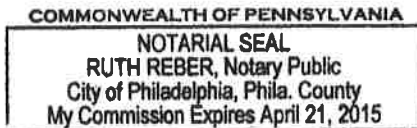


EXHIBIT A

C.P. 66-1/2

SHERIFF'S RETURN OF SERVICE - PHILADELPHIA CO.

(Please prepare separate "return" Form for each Defendant to be served by Sheriff. If you desire a copy of this "Return" mailed to you, please attach self-addressed, stamped envelope for each separate address where service is required.)

COURT TERM AND NUMBER

0013-637

3-14-13

TO BE COMPLETED BY ATTORNEY

PLAINTIFF

Sunoco, Inc. (R&M)

DEFENDANT(S)

Kimberly-Clark Pennsylvania, LLC
Front Street & Avenue of the States
Chester, PA 19103

SERVE AT

Front Street & Avenue of the States
Chester, PA 19103

SPECIAL INSTRUCTIONS

Please Expedite Service

SHERIFF'S NUMBER

COST

MILEAGE

DISTRICT

☐ Summons☐ Complaint☐ Other: _____

TYPE OF ACTION

TO BE COMPLETED BY SHERIFFServed and made known to Kimberly-Clark Pennsylvania LLC Defendant(s) on the 14 day of March, 20 13, at 1134 o'clock A.M. at Avenue of the States Street, County of Philadelphia, Commonwealth of Pennsylvania, in the manner described below:

- ☐ Defendant(s) personally served.
- ☐ Adult family member with whom said Defendant(s) reside(s). Relationship is _____
- ☐ Adult in charge of Defendant's residence who refused to give name or relationship.
- ☐ Manager/Clerk of place of lodging in which Defendant(s) reside(s).
- ☒ Agent or person in charge of Defendant's office or usual place of business. Kevin Kocsi and officer of said Defendant company.
- ☐ Other _____

Sworn to and subscribed before me this 19th day of March 20 13.

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

GRACE M. SPECK, Notary Public
Media Boro., Delaware County
My Commission Expires August 3, 2014

SHERIFF

By _____

Deputy Sheriff

On the _____ day of _____, 20____, at _____ o'clock ____M. Defendant not found because:

- ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other: _____

SHERIFF

By _____

Deputy Sheriff

DEPUTIZED SERVICE

Now, the _____ day of _____, 20____, I, Sheriff of Philadelphia County, Pennsylvania, do hereby deputize the Sheriff of _____ County, _____, to serve this ☐ Summons ☐ Complaint ☐ Other: _____ and make return thereof and according to Law.

SHERIFF

By _____

Deputy Sheriff

TO BE COMPLETED BY ATTORNEYName Nipun J. PatelAddress 2500 One Liberty Place, 1650 Market Street, Philadelphia, PA 19103Telephone Number 215-851-8240Identification Number 208130

Represents:

- ☒ Plaintiff(s) Sunoco, Inc. (R&M)
- ☐ Defendant(s) _____
- ☐ Other _____

TO BE COMPLETED BY PROTHONOTARY

A T T E S T

PRO PROTHONOTARY

DATE 3-14-13 Case ID: 130301637



SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA, 19063

JOSEPH F. McGINN
Sheriff

PHONE (610) 891-4296 FACSIMILE (610) 891-1765

WILLIAM C. KELLY
Chief Deputy

Invoice Number: PO-269747

Date Filed: Mar 13, 2013

Attorney: Philadelphia County

Court Term & No.: OC13-637

Plaintiff: Sunoco

Defendant: Kimberly-Clark PA

Case Type: CIVIL -- Complaint

Comments:

Chester--Fld 3-6--Torts to Land

Front Street & Avenue of the St

Special Instructions:

Check No./Cash: 1103459

Account	Amount
County Account	\$81.50
Mileage	\$8.15
Surcharge Account	\$10.00
Affidavits Account	\$5.00

Total \$104.65

BAKER BOTTS L.L.P.

Kathryn M. Kelley (PA ID 306856)
Kathryn.Kelley@bakerbotts.com
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
Telephone: (202) 639-7700 / Fax: (202) 639-7890

Attorneys for Defendants

Kimberly-Clark Pennsylvania, L.L.C.
and Kimberly-Clark Corporation



OBERMAYER REBMANN

MAXWELL & HIPPEL LLP

Walter M. Phillips, Jr. (PA ID 22788)
Walter.Phillips@obermayer.com
H. David Seidman (PA ID 87769)
David.Seidman@obermayer.com
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1895
Telephone: (215) 665-3000 / Fax: (215) 665-3165

SUNOCO, INC (R&M)

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC, *et al.*

Defendants

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

MARCH TERM, 2013

NO. 130300637

NOTICE TO PLEAD

TO PLAINTIFF:

You are hereby notified to file a written response to the following Preliminary Objection within twenty (20) days from service hereof or a judgment may be entered against you.

/S/

H. David Seidman

Attorney for Defendants

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT
PHILADELPHIA COUNTY, PENNSYLVANIA

SUNOCO, INC (R&M)

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC, *et al.*

Defendants

MARCH TERM, 2013

NO. 130300637

ORDER

AND NOW, this _____ day of _____, 2013, upon consideration of Defendants' Preliminary Objection to Plaintiff's Complaint (the "Preliminary Objection") and any response thereto, it is hereby **ORDERED** that the Preliminary Objection is **GRANTED** and this matter is **TRANSFERRED** to the Delaware County Court of Common Pleas pursuant to Pennsylvania Rule of Civil Procedure 1006(e).

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT
PHILADELPHIA COUNTY, PENNSYLVANIA

SUNOCO, INC (R&M)

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC, *et al.*

Defendants

MARCH TERM, 2013

NO. 130300637

**DEFENDANTS' PRELIMINARY OBJECTION TO
PLAINTIFF'S COMPLAINT FOR LACK OF VENUE**

Pursuant to Pennsylvania Rules of Civil Procedure 1006(e) and 1028(a)(1), Defendants, Kimberly-Clark Pennsylvania, LLC ("Kimberly-Clark PA") and Kimberly-Clark Corporation ("Kimberly-Clark Corp."),¹ object to the Complaint for lack of venue and move this Court to transfer this matter to the Delaware County Court of Common Pleas.

1. In its Complaint, Plaintiff asserts claims against Defendants for negligence (Count I) and private nuisance (Count II), alleging that Defendants failed to properly conduct a planned power outage at Defendant Kimberly-Clark PA's mill in Delaware County that caused an electrical fault at PECO's substation in Delaware County. Plaintiff alleges that such electrical fault resulted in a power disruption to Plaintiff's oil refinery and plant located in Delaware County, purportedly causing damage to Plaintiff's plant and operations.

¹ Kimberly-Clark Corporation also objects because it does not have sufficient minimum contacts with Pennsylvania to be subject to personal jurisdiction in a Pennsylvania Court consistent with due process and the long-arm statute, 42 Pa cons. Stat. §5322(b).

2. Notwithstanding the lack of merit of Plaintiff's claims, venue does not exist in Philadelphia County. Philadelphia County has no connection to Plaintiff's claims and no connection to Defendants.

3. Under Pennsylvania Rule of Civil Procedure 2179(a), actions against corporations such as Defendant may be "brought in and only in: (1) the county where its registered office or principal place of business is located; (2) a county where it regularly conducts business; (3) the county where the cause of action arose; (4) a county where a transaction or occurrence took place out of which the cause of action arose" Pa. R. Civ. P. 2179(a).

4. In its Complaint, Plaintiff summarily alleges that venue is proper in Philadelphia County "because Sunoco is located in Philadelphia County, and Kimberly-Clark regularly conducts business in Philadelphia County." Complaint at ¶15.

5. Plaintiff is wrong on both accounts.

6. First, the location of the Plaintiff is not a basis for proper venue under the Pennsylvania Rules of Civil Procedure. See PA R. Civ. P. 2179(a).

7. Second, as attested to by Defendants in the Affidavit of Steven W. Milton (attached as Exhibit 1), Defendants do not regularly conduct business in Philadelphia County.

8. In order to determine whether a corporation "regularly conducts business" in a county for venue purposes, the court applies a "quality and quantity" test of business contacts. Wimble v. Parx Casino & Greenwood Gaming & Entm't, Inc., 40 A.3d 174, 177 (Pa. Super. 2012)(citing Purcell v. Bryn Mawr Hospital, 579 A.2d 1282 (Pa. 1990).

"Quality of acts means those directly furthering, or essential to, corporate objects; they do

not include incidental acts. Quantity means those acts which are so continuous and sufficient to be general or habitual. The acts of the corporation must be distinguished: those in aid of a main purpose are collateral and incidental, while those necessary to its existence are direct.” Id. at 1285 (citations and quotations omitted). Each case must be based upon its own individual facts. Wimble, 40 A.3d at 177 (citing Schultz v. MMI Products, Inc., 30 A.3d 1224, 1227 (Pa. Super. 2011)).

9. In this case, Defendants do not conduct business activities in Philadelphia County having the quantity and quality of regularly conducting business so as to subject them to venue in Philadelphia County.

10. Kimberly-Clark Corp. provides various corporate administrative functions and has manufacturing facilities and mill distribution centers outside the Commonwealth of Pennsylvania, but does not itself engage in sales or manufacturing in Pennsylvania and does not do business in Philadelphia. Milton Affidavit, ¶3.

11. Kimberly-Clark PA is a subsidiary of Kimberly-Clark Corp. Kimberly-Clark PA’s sole purpose and business is operating the mill located in Delaware County at 1 Avenue of the States, Chester, PA 19013. As operator of the mill, Kimberly-Clark PA manufactures products but does not sell those products for distribution directly to either wholesalers or retailers. Kimberly-Clark PA’s only business activities occur on location at the plant in Delaware County and do not extend to Philadelphia County. Id. at 4 and 5.

12. Furthermore, there is no other bases for venue under Rule 2179(a), in that (1) Defendants do not have their registered offices or principal places of business in Philadelphia County; (2) Philadelphia County is not the county where this cause of action arose; (3) no transactions or occurrences giving rise to this cause of action took place in

Philadelphia County. In addition, the subject matter of this action does not involve property located in Philadelphia. Id. at 6 and 7.

13. This matter should be transferred to the Delaware County Court of Common Pleas.

14. Pennsylvania Rule of Civil Procedure 1006(e) provides, in part, “[i]f a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall not be dismissed but shall be transferred to the appropriate court of that county.”

15. Kimberly-Clark PA’s mill is located in Delaware County. Plaintiff’s refinery is located in Delaware County.² All of the events alleged in the Complaint giving rise to Plaintiff’s claims occurred in Delaware County. Id.

16. Accordingly, Delaware County, not Philadelphia County, is the proper venue for this action, and therefore, this matter should be transferred to the Delaware County Court of Common Pleas.

WHEREFORE, Defendants respectfully request the Court grant their Preliminary Objection and transfer this matter to the Court of Common Pleas for Delaware County.

² The Complaint mistakenly alleges that the refinery and mill are located in Chester County. This is not correct; both the refinery (located in Marcus Hook, PA) and the mill (located in Chester, PA) are located in Delaware County. See Map of Delaware County (attached as Exhibit “B”).

Respectfully submitted,

BAKER BOTTS L.L.P.

/S/

Kathryn M. Kelley
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
Phone: (202) 639-7700 / Fax: (202) 639-7890
kathryn.kelley@bakerbotts.com

OBERMAYER REBMANN
MAXWELL & HIPPEL LLP
Walter M. Phillips, Jr.
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walter.phillips@obermayer.com
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*Attorneys for Defendants, Kimberly-Clark
Pennsylvania, LLC and Kimberly-Clark Corporation*

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Washington, D.C. 20004
michael.barta@bakerbotts.com
mark.robeck@bakerbotts.com

Dated: April 4, 2013

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT
PHILADELPHIA COUNTY, PENNSYLVANIA

SUNOCO, INC (R&M)

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC, et al.

Defendants

MARCH TERM, 2013

NO. 130300637

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF
PRELIMINARY OBJECTION TO
PLAINTIFF'S COMPLAINT FOR LACK OF VENUE**

Defendants, Kimberly-Clark Pennsylvania, LLC ("Kimberly-Clark PA") and Kimberly-Clark Corporation ("Kimberly-Clark Corp."),³ submit this Memorandum of Law in Support of their Preliminary Objection objecting to venue in Philadelphia and moving to transfer this matter to the Delaware County Court of Common Pleas.

MATTER BEFORE THE COURT

The matter before this Court is the disposition of Defendants' Preliminary Objection to Plaintiff's Complaint for Lack of Venue, seeking to transfer this matter to the Delaware County Court of Common Pleas pursuant to Pennsylvania Rule of Civil Procedure 1006(e).

³ Kimberly-Clark Corporation also objects because it does not have sufficient minimum contacts with Pennsylvania to be subject to personal jurisdiction in a Pennsylvania Court consistent with due process.

QUESTION BEFORE THE COURT

Question: Should this Court transfer this matter to the Delaware County Court of Common Pleas, where all of the events alleged in the Complaint giving rise to Plaintiff's claims occurred in Delaware County and where (1) Defendants do not regularly conduct business in Philadelphia (2) Defendants do not have their registered offices or principal places of business in Philadelphia; (3) Plaintiff's cause of action did not arise in Philadelphia; and (4) no transactions or occurrences giving rise to this cause of action took place in Philadelphia?

Suggested Answer: Yes. Pursuant to Pennsylvania Rule of Civil Procedure 1006(e), this matter should be transferred to the Delaware County Court of Common Pleas.

BACKGROUND

In its Complaint, Plaintiff asserts claims against Defendants for negligence (Count I) and private nuisance (Count II), alleging that Defendants failed to properly conduct a planned power outage at Defendant Kimberly-Clark PA's mill in Delaware County that caused an electrical fault at PECO's substation in Delaware County. Plaintiff alleges that such electrical fault resulted in a power disruption to Plaintiff's oil refinery and plant located in Delaware County, purportedly causing damage to Plaintiff's plant and operations.

Notwithstanding the lack of merit of Plaintiff's claims, venue does not exist in Philadelphia County. Philadelphia County has no connection to Plaintiff's claims and no connection to Defendants.

LEGAL ARGUMENT

Venue is improper in Philadelphia County, and this matter should be transferred to the Delaware County Court of Common Pleas. Under Pennsylvania Rule of Civil Procedure 2179(a), actions against corporations such as Defendants may be “brought in and only in: (1) the county where its registered office or principal place of business is located; (2) a county where it regularly conducts business; (3) the county where the cause of action arose; (4) a county where a transaction or occurrence took place out of which the cause of action arose” Pa. R. Civ. P. 2179(a).

In its Complaint, Plaintiff summarily alleges that venue is proper in Philadelphia County “because Sunoco is located in Philadelphia County, and Kimberly-Clark regularly conducts business in Philadelphia County.” Complaint at ¶15. Plaintiff is wrong on both accounts. First, the location of the Plaintiff is not a basis for proper venue under the Pennsylvania Rules of Civil Procedure. See PA R. Civ. P. 2179(a).

Second, as attested to by Defendants in the Affidavit of Steven W. Milton (attached as Exhibit 1), Defendants do not regularly conduct business in Philadelphia County. In order to determine whether a corporation “regularly conducts business” in a county for venue purposes, the court applies a “quality and quantity” test of business contacts. Wimble v. Parx Casino & Greenwood Gaming & Entm't, Inc., 40 A.3d 174, 177 (Pa. Super. 2012)(citing Purcell v. Bryn Mawr Hospital, 525 Pa. 237, 579 A.2d 1282 (Pa. 1990). “Quality of acts means those directly furthering, or essential to, corporate objects; they do not include incidental acts. Quantity means those acts which are so continuous and sufficient to be general or habitual. The acts of the corporation must be distinguished: those in aid of a main purpose are collateral and incidental, while those necessary to its existence

are direct.” Id. at 1285 at 1285 (citations and quotations omitted). Each case must be based upon its own individual facts. Wimble, 40 A.3d at 177 (citing Schultz v. MMI Products, Inc., 30 A.3d 1224, 1227 (Pa. Super. 2011)).

In this case, Defendants do not conduct business activities in Philadelphia County having the quantity and quality of regularly conducting business so as to subject them to venue in Philadelphia County. Kimberly-Clark Corp. provides various corporate administrative functions and has manufacturing facilities and mill distribution centers outside of Pennsylvania, but does not itself engage in sales or manufacturing in Pennsylvania and does not do business in Philadelphia County. Milton Affidavit, ¶3. Kimberly-Clark PA is a subsidiary of Kimberly-Clark Corp. Kimberly-Clark PA’s sole purpose and business is operating the mill located in Delaware County at 1 Avenue of the States, Chester, PA 19013. As operator of the mill, Kimberly-Clark PA manufactures products but does not sell those products for distribution directly to either wholesalers or retailers. Kimberly-Clark PA’s only business activities occur on location at its mill in Delaware County and do not extend to Philadelphia County. Id. at 4 and 5.

Furthermore, there is no other bases for venue in Philadelphia County under Rule 2179(a), in that (1) Defendants do not have their registered offices or principal places of business in Philadelphia County; (2) Philadelphia is not the county where this cause of action arose; and (3) no transactions or occurrences giving rise to this cause of action took place in Philadelphia County. In addition, the subject matter of this action does not involve property located in Philadelphia County. Id. at 6 and 7.

This matter should be transferred to the Delaware County Court of Common Pleas. Pennsylvania Rule of Civil Procedure 1006(e) provides, in part, “[i]f a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall not be dismissed but shall be transferred to the appropriate court of that county.” Kimberly-Clark PA’s mill is located in Delaware County. Plaintiff’s refinery is located in Delaware County.⁴ All of the events alleged in the complaint giving rise to Plaintiff’s claims occurred in Delaware County. *Id.* Accordingly, Delaware County, not Philadelphia County, is the proper venue for this action, and therefore, this matter should be transferred to the Delaware County Court of Common Pleas.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, Defendants respectfully request the Court grant their Preliminary Objection and transfer this matter to the Court of Common Pleas for Delaware County as provided for in the attached proposed form of Order.

⁴ The Complaint mistakenly alleges that the refinery and mill are located in Chester County. This is not correct; both the refinery (located in Marcus Hook, PA) and the mill (located in Chester, PA) are located in Delaware County. See Map of Delaware County (attached as Exhibit “B”).

Respectfully submitted,

BAKER BOTTS L.L.P.

/S/

Kathryn M. Kelley
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
Phone: (202) 639-7700 / Fax: (202) 639-7890
kathryn.kelley@bakerbotts.com

OBERMAYER REBMANN
MAXWELL & HIPPEL LLP
Walter M. Phillips, Jr.
H. David Seidman
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Philadelphia, PA 19103-1895
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walter.phillips@obermayer.com
david.seidman@obermayer.com

*Attorneys for Defendants, Kimberly-Clark
Pennsylvania, LLC and Kimberly-Clark Corporation*

OF COUNSEL / *PRO HOC VICE* PENDING

Michael J. Barta
Mark R. Robeck
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
michael.barta@bakerbotts.com
mark.robeck@bakerbotts.com

Dated: April 4, 2013

EXHIBIT A

EXHIBIT A

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AFFIDAVIT OF STEVEN W. MILTON

My name is Steven W. Milton. I am over the age of eighteen (18) years and am competent to make this affidavit. I hereby declare under penalty of perjury under the laws of the State of Pennsylvania that the foregoing is within my personal knowledge and true and correct:

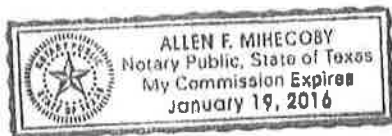
1. I have been employed Kimberly-Clark Corporation since 2007 in its Legal Department. My current title is Assistant General Counsel and Assistant Secretary.
2. In the course of acting as Assistant General Counsel and Assistant Secretary for Kimberly-Clark, I have gained personal knowledge of the business structure of Kimberly-Clark Corporation and its subsidiaries, the location and operations of Kimberly-Clark Pennsylvania, LLC's mill, and where Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC do business.
3. Kimberly-Clark Corporation is the parent company of affiliated Kimberly-Clark subsidiaries that perform a variety of business functions in various locations. Kimberly-Clark Corporation provides various corporate administrative functions and has manufacturing facilities and mill distribution centers outside the State of Pennsylvania, but does not itself engage in sales or manufacturing in the State of Pennsylvania. Kimberly-Clark Corporation does not do business in Philadelphia County, Pennsylvania.
4. Kimberly-Clark Pennsylvania, LLC is one subsidiary which has a sole purpose of operating a mill located at 1 Avenue of the States, Chester, Delaware County, PA 19013. As operator of the mill, Kimberly-Clark Pennsylvania, LLC manufactures products but does not sell those products for distribution directly to either wholesalers or retailers. Indeed, Kimberly-Clark Pennsylvania, LLC's only business is to operate the mill and all those activities occur on location at the plant in Delaware County, Pennsylvania and do not extend to Philadelphia County, Pennsylvania.
5. Although products made by Kimberly-Clark Corporation subsidiaries, including Kimberly-Clark Pennsylvania, LLC, are sold in Philadelphia County, Pennsylvania, the distribution and sale of those products is handled by a different subsidiary of Kimberly-Clark Corporation that is not a party to the lawsuit filed by Sunoco, Inc. (R&M), and which was not involved in the events alleged in Sunoco's lawsuit.

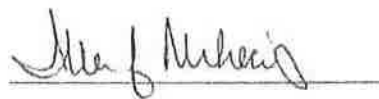
6. In the lawsuit filed by Sunoco, Inc. (R&M), Case No. 130300637 in the Court of Common Pleas for Philadelphia County, it is alleged that events and actions at the mill operated by Kimberly-Clark Pennsylvania, LLC caused Sunoco to lose electrical service and suffer damages as a result. All of the alleged events and actions of Kimberly-Clark Pennsylvania, LLC occurred at the mill located in Delaware County, Pennsylvania.
7. Neither Kimberly-Clark Corporation nor Kimberly-Clark Pennsylvania, LLC (i) have their registered offices or principal places of business in Philadelphia County, or (ii) own property in Philadelphia County.

FURTHER AFFIANT SAYETH NOT.


Steven W. Milton

SWORN AND TO AND SUBSCRIBED before me on this 4th day of
April, 2013.

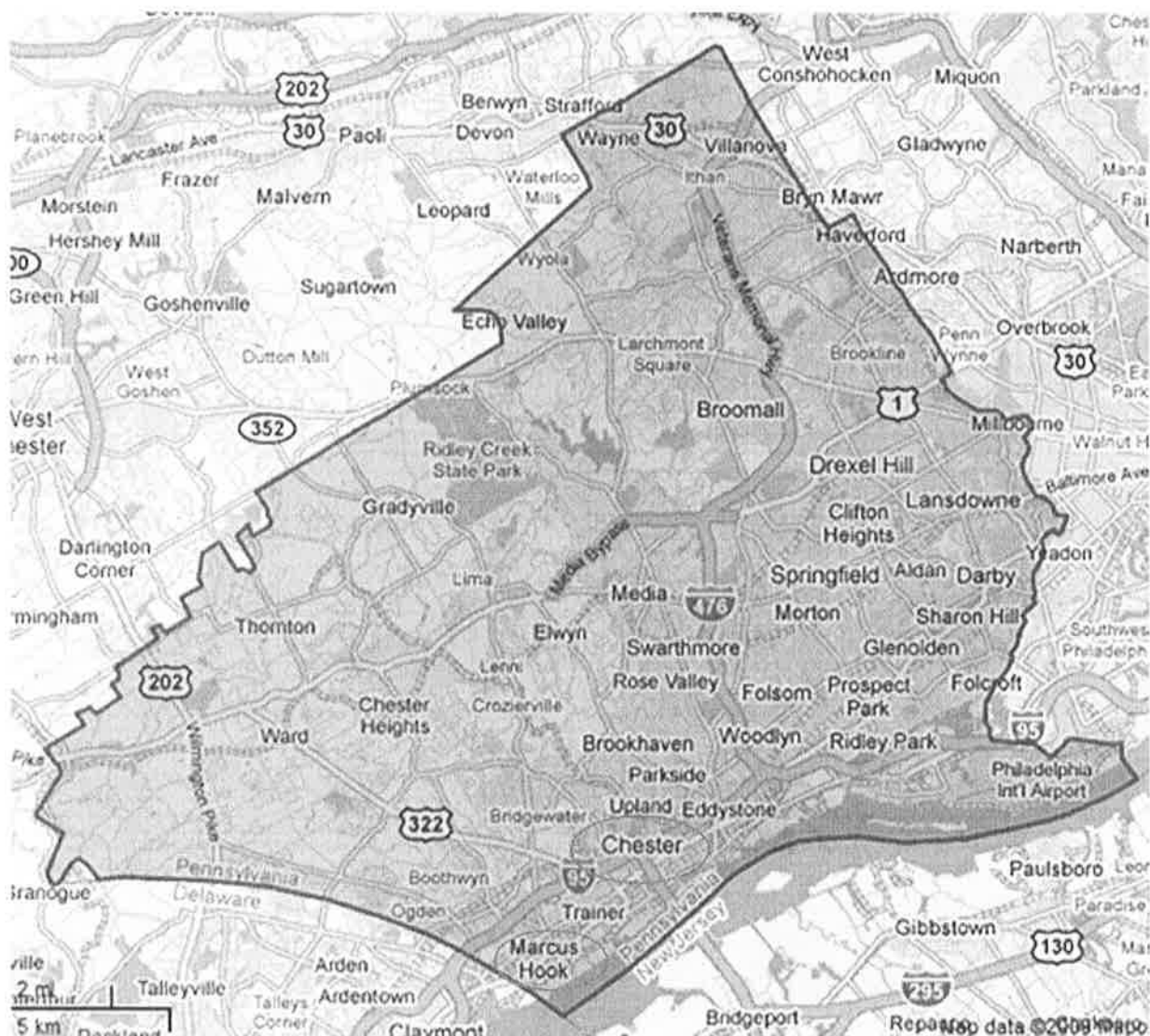



Notary Public, State of Texas

My Commission Expires: January 19, 2016

EXHIBIT B

EXHIBIT B



IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT
PHILADELPHIA COUNTY, PENNSYLVANIA

SUNOCO, INC (R&M)

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC, et al.

Defendants

MARCH TERM, 2013

NO. 130300637

CERTIFICATE OF SERVICE

I, H. David Seidman, counsel for Defendants, do hereby certify that on April 4, 2013 a true and correct copy of the foregoing Preliminary Objection was served upon counsel of record via electronic filing.

Thomas J. McGarrigle
Nipun J. Patel
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103

/s/

H. David Seidman

Dated: April 4, 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUNOCO, INC (R&M)

Plaintiff

vs.

KIMBERLY-CLARK
PENNSYLVANIA, LLC, *et al.*

Defendants

CIVIL ACTION NO.

CERTIFICATE OF SERVICE

I, H. David Seidman, Esquire, hereby certify that on this 4th day of April 2013 a true and correct copy of the foregoing Notice of Removal was served by e-mail and First-Class mail on the following counsel of record:

Thomas J. McGarrigle
Nipun J. Patel
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
tmcgarrigle@reedsmith.com
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/S/

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